
INDIANA COMMISSION ON PROPRIETARY EDUCATION*Board of Commissioners Meeting Memorandum*

Date: November 27, 2006

From: Rebecca Carter, Director of Regulatory Compliance

**Subject: FORMAL HEARING
FINDINGS OF FACTS, CONCLUSIONS OF LAW, PROPOSED ORDER
PERTAINING TO D. O. TUCKER FORMAL HEARING**

Staff Recommendation

The commission staff recommends that the Board of Commissioners adopt, modify or order a new hearing regarding the findings of the Administrative Law Judge, Janice E. Kreuscher, in the case of:

D.O. Tucker
Vs
Lincoln Technical Institute – Indianapolis

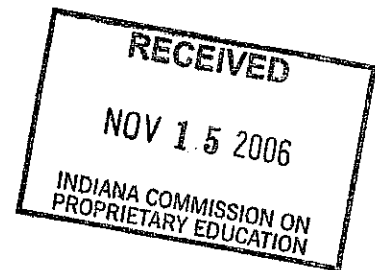
Background

A final evidentiary hearing was held before the ALJ on October 18, 2006. Petitioner D.O. Tucker appeared pro se. Respondent Lincoln Technical Institute – Indianapolis was represented by Dr. Frank Trocki of West Orange, N.J., its Vice President of Business Development and former director of education on the Indianapolis campus. The ALJ determined that there is no evidentiary or legal basis to order a refund.

Supportive Documentation

1. Notice of Submission
2. Recommended Findings of Fact and Conclusions of Law
3. Proposed Order

BEFORE THE INDIANA COMMISSION
ON PROPRIETARY EDUCATION



D.O. TUCKER,
Petitioner,

v.

LINCOLN TECHNICAL INSTITUTE,
Respondent.

No. 2006-CPE-001

NOTICE OF SUBMISSION

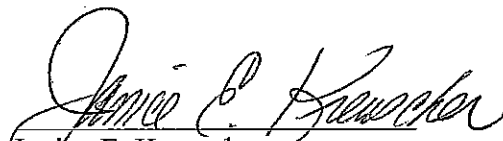
The attached Recommended Findings of Fact and Conclusions of Law have been submitted to the Commission on Proprietary Education.

Should you object to the Recommendation and oppose adoption of the Proposed Order, you must submit a written objection pursuant to Ind. Code §§ 4-21.5-3-29 within fifteen (15) days of receipt of this notice to the Commission on Proprietary Education, 302 West Washington St., Room E201, Indianapolis, Ind. 46204-2767. Objections must be in writing and must identify the basis of the objection with reasonable particularity

Respectfully submitted,

Date:

Nov. 8, 2006

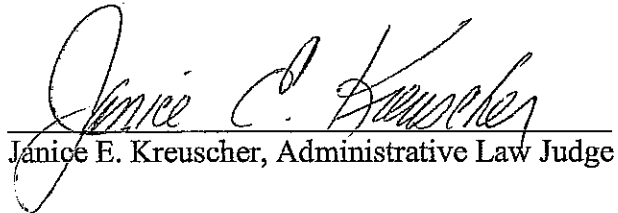

Janice E. Kreuscher
Administrative Law Judge

Certificate of Service

I certify on November 8, 2006, I have served the foregoing documents by first class mail on the following persons at the addresses shown below:

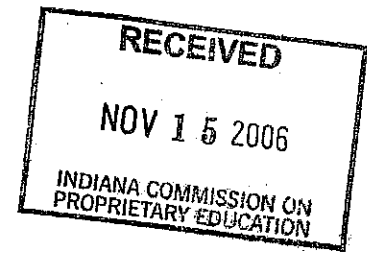
D.O. Tucker
5783 Aquamarine Drive
Carmel, Ind. 46033

Lincoln Technical Institute
Att'n Cindy Ryan, Executive Director
7225 Winton Drive, Building #128
Indianapolis, Ind. 46268



Janice E. Kreuscher, Administrative Law Judge

BEFORE THE INDIANA COMMISSION
ON PROPRIETARY EDUCATION



D.O. TUCKER,
Petitioner,

v.

LINCOLN TECHNICAL INSTITUTE,
Respondent.

No. 2006-CPE-001

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Indiana Commission on Proprietary Education ("Commission") on Petitioner's Request for Hearing filed in this cause on February 7, 2006. The Board appointed Janice E. Kreuscher as the Administrative Law Judge ("ALJ") in this matter in May 2006. A final evidentiary hearing was held before the ALJ on October 18, 2006. Petitioner D.O. Tucker appeared pro se. Respondent Lincoln Technical Institute ("LTI") was represented by Dr. Frank Trocki of West Orange, N.J., its vice president of business development and former director of education on the Indianapolis campus. The ALJ, having fully considered the filings, testimony and evidence presented at the hearing, now makes the following recommended finding of facts, conclusions of law and resolution of the dispute.

Findings of Fact

Statutory and Regulatory Scheme

1. This proceeding is governed by the Administrative Orders and Procedures Act ["AOPA"]. Ind. Code §§ 4-21.5 *et seq.*

2. The Commission is charged with the duty and responsibility of regulating privately owned postsecondary vocational educational institutions. Ind. Code §§ 20-12-76 *et seq.*, formerly codified at §§ 20-1-19.

3. The Commission is charged with enforcing statutory standards set out in Ind. Code §§ 20-12-76-10 and -30 and resolving disputes between the institutions and students who claim they were damaged by noncompliance with those standards. Ind. Code § 20-1-19-17. If claims are not resolved informally, the Commission may conduct a hearing pursuant to AOPA. 570 IAC 1-6-3, 1-4-10; Ind. Code § 4-21.5-3.

4. The Board is empowered to appoint an administrative law judge to conduct hearings on its behalf. Ind. Code § 4-21.5-3-9(a)(3).

Procedural Background

5. On or about November 23, 2005, Mr. Tucker filed a Complaint with the Commission claiming Lincoln Technical Institute had violated the statutory standards by misrepresenting the contents of the course he enrolled in, mainly enticing him to enroll in a course he believed would provide him with skills to install and build home theater or entertainment systems but failing to provide such training. He sought a full refund of the \$11,400 he had paid for tuition and other costs and forgiveness of the \$282 he owed for the course and certification for having completed the program.

6. After notifying LTI of the charges and reviewing the materials submitted by both parties, the Commission's director of regulatory compliance determined that Mr. Tucker was not entitled to relief. She explained the 720-hour Electronic System Technology program he enrolled in did not include specific instruction in home theater installation but that the school

was willing to provide him a free course on the topic that the school had added. The determination was issued on or about January 19, 2006.

7. This proceeding is essentially an appeal from that determination. The actual proceeding, however, was conducted *de novo* and neither party was restricted to allegations or evidence included in the initial submissions before the Commission staff.

8. Essentially, Mr. Tucker is seeking a refund of the tuition paid to the school on the basis that LTI had advertised that the EST program would include training in home theater/entertainment installation and had not provided that training in his classes. He contends that the advertising misrepresented the curriculum. LTI contends that the course he enrolled in was a survey course that prepared him to learn more about home theater/entertainment systems and provided him with skills and knowledge that could be applied to that specialty.

Factual Background

9. From March 2005 through October 2005, Mr. Tucker was enrolled in and attended a 720-hour EST program at the Indianapolis campus of LTI. The program included instruction in several categories of electric and electronic subjects including computers, cabling, fire and security systems. Although one course included instruction in cable and video systems, there was not a separate delineated course in home entertainment or theater systems.

10. The program costs \$11,682, of which \$282 has not been paid.

11. At the time Mr. Tucker enrolled at LTI, the EST program was comprised of eight courses, that were summarized on a Course Outline or syllabus distributed to the students. There was no reference on the outline to home entertainment or theater systems.

12. In late 2005, LTI received permission from its accrediting body to expand its offerings by adding courses that would include additional training in audio systems, broadband

cable, close circuit television and electronic media. Those courses would follow the program Mr. Tucker was taking and would add another 360 hours of instruction. Mr. Tucker was not enrolled in those classes.

13. Prior to enrolling at LTI, Mr. Tucker saw a television commercial for the Electronic System Technology program at LTI. The commercial stated that the program could prepare students for several careers, including working with home theater systems. Mr. Tucker subsequently enrolled at LTI intending to work with home entertainment systems.

14. During the orientation, Mr. Tucker was provided with the syllabus that did not reference home entertainment systems and was shown a mockup of a home used as a classroom laboratory that contained components of a home entertainment system. Thus he assumed that he would receive instruction relating to the system during his course of study.

15. While another group of students with another instructor received specific training on home entertainment systems, Mr. Tucker's section did not. Mr. Tucker and his colleagues did, however, receive instruction on building, programming, coding, etc., that can be applied to the home entertainment environment.

16. One of Mr. Tucker's classmates who testified at the hearing now works with home entertainment systems having received specific training after being hired.

17. Until toward the end of his studies, Mr. Tucker voiced no complaints about his courses until he learned that another instructor was teaching about the home entertainment systems while his instructor was not. He then accused LTI of misleading prospective students about the curriculum by referring to home theater systems and not teaching them.

18. Mr. Trocki offered to resolve the dispute by allowing Mr. Tucker to take one of the new courses which would specifically address home theater systems without charge. Tucker refused.

19. Mr. Tucker apparently believes that the casual references to those systems in commercials and during the tour constituted an enforceable promise that he would obtain specific instruction in those systems. While his belief may be sincere, it does not automatically lead to a finding of misrepresentation.

20. While the commercial that Mr. Tucker put into evidence references home entertainment systems, it does not suggest that the focus of the EST course is those particular systems. Even if the commercial could be interpreted as Mr. Tucker suggests, the interpretation is belied by the syllabus that he was provided early enough in the program to have spurred questions and possibly allow him to leave the program with a refund.

21. Moreover, Dr. Trocki's explanation of how the education Mr. Tucker received could be applied to home entertainment systems is logical, especially in light of Mr. Tucker's witness having done just that.

22. The fact that another instructor may have given more focus to home entertainment systems than his did is similarly unavailing in light of Dr. Trocki's explanation that instructors may differ in emphasis or supplement course materials. Students enrolled in different sections of a course frequently are exposed to different of information.

23. In general, much of Mr. Tucker's case reflected a misunderstanding of the diversity that can exist in an educational setting, the limits of a general course of study and the necessity for additional course work to obtain specific educational objectives.

24. Additionally, the testimony from LTI representatives regarding educational objectives and the course of study was more reasonable than that advanced by Mr. Tucker.

25. While Mr. Tucker may have sincerely believed he would learn more about his chosen field than he did, LTI's offer that he take another class focusing on that subject without charge appears to be a reasonable solution that dispels any suggestion of intentional misrepresentation.

26. None of the evidence demonstrates a knowing violation of statute or rule regulating the standards for postsecondary proprietary institutions or a violation of duties owed by those institutions to their students or the State.

Conclusions of Law

1. This proceeding is properly before the ALJ, pursuant to Ind. Code §§ 4-21.5 *et seq.*, and she has the authority and jurisdiction to hear and decide this case.

2. No procedural defect occurred in the hearing process.

3. Petitioner has the burden of proof in this matter and is required to prove his case by a preponderance of the evidence presented at the hearing.

4. In order to prove his case, Petitioner was required to show that LTI violated the statutory standards by making material misrepresentations and that such violations entitled him to a return of tuition and fees.

5. Petitioner failed to meet his burden in this case of proving by a preponderance of evidence that LTI violated a rule or law governing the postsecondary proprietary educational institutions or a duty owed students at such institutions in a way that warrants a return of tuition and fees.

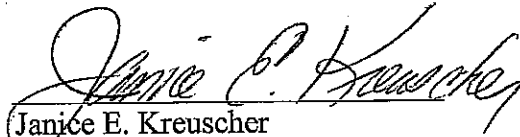
6. Therefore, there is no evidentiary or legal basis to order a refund.

7. All Findings of Fact which can be deemed Conclusions of Law will be considered Conclusions of Law, and all Conclusions of Law which can be deemed Findings of Fact will be considered Findings of Fact.

Respectfully submitted,

Date:

Nov. 8, 2006



Janice E. Kreuscher
Administrative Law Judge

COMMISSION ACTION

Approved and Adopted this _____ day of _____ 2006.